



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/517,784	12/13/2004	Gideon Gross	GROSS32	4624
1444 7590 04/06/2009 BROWDY AND NEIMARK, P.L.L.C. 624 NINTH STREET, NW SUITE 300 WASHINGTON, DC 20001-5303				
EXAMINER				
DUFFY, BRADLEY				
ART UNIT		PAPER NUMBER		
1643				
MAIL DATE		DELIVERY MODE		
04/06/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of Non-Compliant Amendment (37 CFR 1.121)

Application No.

10/517,784

Examiner

BRADLEY DUFFY

Applicant(s)

GROSS ET AL.

Art Unit

1643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

The amendment document filed on 16 December 2008 is considered non-compliant because it has failed to meet the requirements of 37 CFR 1.121 or 1.4. In order for the amendment document to be compliant, correction of the following item(s) is required.

THE FOLLOWING MARKED (X) ITEM(S) CAUSE THE AMENDMENT DOCUMENT TO BE NON-COMPLIANT:

- ☐ 1. Amendments to the specification:
 - ☐ A. Amended paragraph(s) do not include markings.
 - ☐ B. New paragraph(s) should not be underlined.
 - ☐ C. Other _____.
- ☐ 2. Abstract:
 - ☐ A. Not presented on a separate sheet. 37 CFR 1.72.
 - ☐ B. Other _____.
- ☐ 3. Amendments to the drawings:
 - ☐ A. The drawings are not properly identified in the top margin as "Replacement Sheet," "New Sheet," or "Annotated Sheet" as required by 37 CFR 1.121(d).
 - ☐ B. The practice of submitting proposed drawing correction has been eliminated. Replacement drawings showing amended figures, without markings, in compliance with 37 CFR 1.84 are required.
 - ☐ C. Other _____.
- ☒ 4. Amendments to the claims:
 - ☐ A. A complete listing of all of the claims is not present.
 - ☐ B. The listing of claims does not include the text of all pending claims (including withdrawn claims).
 - ☒ C. Each claim has not been provided with the proper status identifier, and as such, the individual status of each claim cannot be identified. Note: the status of every claim must be indicated after its claim number by using one of the following status identifiers: (Original), (Currently amended), (Canceled), (Previously presented), (New), (Not entered), (Withdrawn) and (Withdrawn-currently amended).
 - ☐ D. The claims of this amendment paper have not been presented in ascending numerical order.
 - ☒ E. Other: See Continuation Sheet.
- ☐ 5. Other (e.g., the amendment is unsigned or not signed in accordance with 37 CFR 1.4):

For further explanation of the amendment format required by 37 CFR 1.121, see MPEP § 714.

TIME PERIODS FOR FILING A REPLY TO THIS NOTICE:

1. Applicant is given **no new time period** if the non-compliant amendment is an after-final amendment or an amendment filed after allowance. If applicant wishes to resubmit the non-compliant after-final amendment with corrections, the **entire corrected amendment** must be resubmitted.
2. Applicant is given **one month**, or thirty (30) days, whichever is longer, from the mail date of this notice to supply the correction, if the non-compliant amendment is one of the following: a preliminary amendment, a non-final amendment (including a submission for a request for continued examination (RCE) under 37 CFR 1.114), a supplemental amendment filed within a suspension period under 37 CFR 1.103(a) or (c), and an amendment filed in response to a *Quayle* action. If any of above boxes 1. to 4. are checked, the correction required is only the **corrected section** of the non-compliant amendment in compliance with 37 CFR 1.121.

Extensions of time are available under 37 CFR 1.136(a) only if the non-compliant amendment is a non-final amendment or an amendment filed in response to a *Quayle* action.

Failure to timely respond to this notice will result in:

Abandonment of the application if the non-compliant amendment is a non-final amendment or an amendment filed in response to a *Quayle* action; or

Non-entry of the amendment if the non-compliant amendment is a preliminary amendment or supplemental amendment.

/BRAD DUFFY/
Examiner, Art Unit 1643

571-272-9935

Continuation of 4(e) Other: The amendment filed on December 16, 2008, is considered non-compliant and has not been entered because it fails to meet the requirements of 37 CFR § 1.121, as amended on June 30, 2003 (see 68 Fed. Reg. 38611, Jun. 30, 2003).

The claim amendment is non-compliant because the amendment e.g., identifies claims 56 and 57 as new claims; yet these claims were first presented in the claim amendment filed 8/11/08 which was not entered because it was non-compliant. See MPEP 714.19 which provides a list of amendments which are denied entry. Notably, this list includes: "(O) An amendment including changes to the specification/claims which is not in compliance with 37 CFR 1.121". For this reason, while Applicant's remarks filed 12/16/08, regarding the status of claims 56 and 57 are acknowledged, they are not found persuasive.

Accordingly, as previously set forth, because the amendment filed 8/11/08 has not been entered, claims 56-57, which were first presented in this amendment should have the status identifier (not entered) and be presented without claim text in the current amendment. See MPEP 714 which states: "The status identifier (not entered) is used for claims that were previously proposed in an amendment (e.g., after-final) that was denied entry," and "Canceled and not entered claims must be listed by only the claim number and status identifier, without presenting the text of the claims."

Thus, if Applicant wishes to present any new claims for consideration, then such claims should be numbered starting consecutively after the claim with the highest number previously presented, in this case claim 58 with the status of "new" and without claim markings. See also 37 CFR § 1.126 which states: "When claims are added, they must be numbered by the applicant consecutively beginning with the number next following the highest numbered claim previously presented (whether entered or not)".

Only the corrected section of the non-compliant amendment must be resubmitted (in its entirety), e.g., the entire "Amendments to claims" section of applicant's amendment must be re-submitted. 37 CFR § 1.121(h).

/Stephen L. Rawlings/
Primary Examiner, Art Unit 1643